

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 237 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
SURESH AMIN FAMILY TRUST - Respondent(s)

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Appearance :

MRs Mona Bhatt for Applicant(s) : 1,
MR MANISH J SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/08/2006**ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

Mrs. Mona Bhatt, learned counsel for the Revenue.
Mr. Manish J. Shah, learned counsel for the respondent assessee.

2. At the instance of the Revenue, the Tribunal has referred the following question for our opinion;

“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee who has engaged in a profession of pathological laboratory could be said to be carrying on a business as an industrial undertaking, which produced an article or thing and was thus entitled to investment allowance u/s. 32A of the Act on the new machinery installed in his clinic ?”

Learned counsel for the Revenue, after taking us through Section 32-A of the Income Tax Act, 1961 (as applicable), submitted that the work done in a Pathological Laboratory cannot be put at par to an industrial undertaking, and as there is no end product in the pathological examination of the material supplied, the Tribunal was unjustified in holding that the assessee, a Trust, which is running a Pathological Centre,

would

not be entitled to investment allowance under Section 32-A of the Act on the new machinery installed in the Clinic.

3. Learned counsel for the Revenue, placing her strong reliance upon the Judgment of the Andhra Pradesh High Court in the matter of Commissioner of Income-Tax Vs. Dr. S. Surender Reddy, 243 ITR 110, submitted that the Division Bench of Andhra Pradesh High Court had observed that installation of the X-Ray machinery may amount to an industrial undertaking because raw material is provided and the end result is a photograph, she, however, submits that, in the very same Judgment, the Andhra Pradesh High Court has observed that a Pathological Laboratory, if installs certain plant and machinery, then they would not be entitled to investment allowance under Section 32A of the Income Tax Act.

4. On the other hand, learned counsel for the assessee, placing reliance upon different Judgments of this Court, other High Courts and the Supreme Court, submitted that the end result of the undertaking which is using a plant or machinery if

is some thing new then the work undertaken would amount to be

a work of an industrial undertaking, and in such a case Section 32A of the Income Tax Act would apply with full force.

5. True it is, that in the matter of *Dr. S. Surender Reddy*, the Division Bench had held that the report given by conducting the tests using the equipment installed by the assessee did not amount to production of an article or a thing. No article or thing was produced by the machinery while giving the report after conducting the pathological tests. They observed that a person records readings by using machinery, therefore, it could not be said that it is a thing or an article. The Andhra Pradesh High Court concluded that the equipment used for the purpose of conducting pathological tests would not qualify for investment allowance.

6. In the matter of *Natvarlal Ambalal Dave Vs. Commissioner of Income-Tax, 225 ITR 936*, a Division Bench of this Court has observed that, it is not the requirement of Section 32A of the Income Tax Act, 1961 nor it can be read in

the context of the provision, that in order to fulfill the condition that a machinery or plant must have been installed in an industrial undertaking for the purpose of manufacture or production of an article or thing, that such article or thing must be saleable in the open market as a common marketable commodity only. The Court further observed that, a thing may be produced for being sold to a particular person or for the use of a particular person. Relying upon the Judgment of the Rajasthan High Court in the matter of Commissioner of Income Tax Vs. Trinity Hospital, 225 ITR 178, the High Court observed that, X-ray machine satisfies the condition in Section 32A that it is plant and machinery through which an article or thing could be produced. The High Court also observed that, the wide definition of "industry" in the context of of employer-employee relations under the various industrial laws may not be applicable to the meaning of "industrial undertaking" under the Income-tax Act, as the expression is used in the context in which the provisions are set, the meaning of "industrial undertaking" in the set up of the Income-tax Act takes its colour from the activity for which the new plant or machinery is set up. The High Court observed that, any activity which primarily concerns the production of any article or thing would

fall in the category of industrial undertaking for that purpose. In the matter of Commissioner of Income Tax Vs. Upasana Hospital, 225 ITR 845, the Kerala High Court has held that, if a firm is running a hospital, then running of the hospital would be business carried on by the firm. In the said matter also, the High Court observed that the firm would be entitled to investment allowance on the expenditure incurred by the firm on purchase of X-ray plant, I.C.C.U. And E.C.G. In the matter of Commissioner of Income Tax Vs. Trinity Hospital, 225 ITR 178, the Rajasthan High Court has held that the expenses incurred for purchasing X-ray machines, Ultra-sound Scanner, Foetal monitor to be installed in the hospital would be entitled to investment allowance. The High Court had gone to the extent of saying that the Air-conditioner installed for efficient working of such machines would also be covered within the investment allowance. In the case of Commissioner of Income-Tax Vs. Professional Information Systems And Management, 274 ITR 242

in the matter of data-processing or computer, a Division Bench of this Court held that the investment allowance is admissible in respect of machinery or plant installed in any industrial undertaking for the purpose of business of construction,

manufacture or production of any article or thing not being an article or thing specified in the list in the Eleventh Schedule to the Income Tax Act. The Division Bench observed that, “data-processing” or “computer” is not mentioned in the Eleventh Schedule. [It is to be noted that Pathological Report is not a part or shown in the Eleventh Schedule to the Income Tax Act.] The Division Bench further observed that, the test for determination as to whether the machinery/apparatus can be termed as a plant or not would primarily depend upon the function to which the said machinery/apparatus is put, regardless of the location where the machinery/apparatus is situated. This is over and above the test of the end-product being an entirely different commercial commodity vis-a-vis the input. The Division Bench observed that, in a computer system or data processing system, the inputs which are fed in are entirely different, in a different form with different indicators. As against that, the end-product, i.e., balance sheets, various accounts, statements, analysis, etc., which emerge by way of print-outs are distinct and different from the inputs inasmuch as what comes out has a different connotation and use. According to the High Court, the activity of data processing through the use of computers is one which would amount to business of

manufacture or production of articles or things and the unit which undertakes such computer services for other concerns would be an industrial undertaking. The same are the observations of the Supreme Court in the matter of Commissioner of Income-Tax Vs. Peerless Consultancy And Services (P.) Ltd., 248 ITR Page 178. The judgment of the Calcutta High Court in the case of C.I.T. Vs. Shaw Wallace and Co.Ltd, 201 ITR 17 and Kerala High Court in the matter of C.I.T. Vs. Datacons (P.) Ltd., 155 ITR 66 were pressed into service before the Supreme Court. The Supreme Court observed that learned counsel for the Revenue was unable to show them any judgment of a Court of the country or abroad which takes the view that processing of data is not the processing of goods. If processing of data is taken to be processing of goods, then processing of any other thing will have to be taken to be processing of the goods. In a case of pathological test, the goods which may be worthless or useless or may be of some value which are like blood sample, urine sample, stool sample or any other is the raw product supplied by the customer to the laboratory for obtaining a report over it. The report may be in relation to one person only, but that report would be something different from the raw product.

7. Learned counsel for the Revenue further submitted that, if simple data are provided on the Scanner or the screen of the computer or machine, then such machine or computer is not producing any product. In our considered opinion, the submission cannot be accepted, because with the advancement in the technology, a particular Pathological Test Machine may provide figures or a printed-report. If the figures are provided and on basis of such figures a report is produced, then a person preparing the report is taking help and assistance of the machinery/plant and the machinery/plant had produced something which is different from the raw material. The distinction, sought to be made by the learned counsel for the Revenue, would not carry the matter any further.

8. Learned counsel for the assessee has placed his strong reliance upon the Judgment of the Allahabad High Court in the case of Commissioner of Income-Tax Vs. R.M. Malhotra, Proprietor, Malhotra Nursing And Maternity Home, [2006] 283 ITR 181, to contend that, Echo Scanning Equipment and other articles would be treated to be plant or machinery if these are used in a Diagnostic Centre. The Division Bench placed its

reliance upon the Judgment of this Court in the matter of C.I.T. v. Professional Information Systems and Management [274 ITR 242]. The Division Bench of Allahabad High Court observed that the Echo-Scanning Equipment produces an echograph, which

was like an X-ray machine and therefore investment allowance was permissible.

9. From a juxtapose reading of these judgments of our own High Court, and of different High Courts including the Judgment of the Supreme Court, in the matter of 'data processing', it would be crystal clear that, if a plant and machinery is installed and some raw material, which may be in form of tangible article or intangible article is used and end result is something different, and even if it is in form of a report of figures, then the activity would be taken to be an 'industrial undertaking' and such plant and machinery would be entitled to investment allowance. The Tribunal, in our opinion, was absolutely justified in observing that the assessee Trust, which was running Pathological Laboratory as its business adventure, was entitled to investment allowance on the expenditure incurred for pathological equipments.

10. The question, referred to us, is answered in favour of the assessee. The Reference shall stand disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

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